



October 13, 2021

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: *WT Docket No. 20-443; GN Docket No. 17-183*

Dear Ms. Dortch:

For over five years, DISH Network Corporation (“DISH”) has been picking fights with satellite operators so that it can upset the carefully crafted balance the Commission has struck for the heavily shared 12.2-12.7 GHz band (the “12 GHz Band”) and be given exclusive licenses for free to add to its vast warehouses of unused spectrum meant for speculation and corporate gain to the detriment of consumers. Having failed to convince the Commission to give it this windfall based on the merits of its arguments, DISH, its Astroturf coalition, and its highly paid political spokesmen have now turned to a public-pressure campaign¹ in an attempt to force the Commission to make decisions that will harm Americans. The Commission should not accede to these desperate tactics.

Most recently, DISH and the coalition it funds made the bizarre claim that supporting its spectrum-grab at the expense of operators that are already deploying broadband infrastructure to otherwise unserved Americans is somehow consistent with Congressional efforts to extend more broadband to unserved areas. Yet the opposite is obviously true—giving more rights to those like DISH that have failed to deliver for over a decade on empty promises would run counter to every effort to actually connect Americans. Instead, the surest way to promote rapid deployment of high-speed broadband would be to reject DISH’s proposals, remove the MVDDS encumbrances that hamper next-generation satellite operators in the 12 GHz Band, and close the proceeding.

DISH has long recognized its hoped-for windfall would harm users of next-generation satellite systems, so it pursued a series of battles to drive satellite operators from the band. Indeed, less than two years ago, DISH explicitly confirmed its position that “concurrent sharing of

¹ See, e.g., Drew FitzGerald, *Elon Musk vs. Charlie Ergen: Battle of the Billionaires Over Spectrum*, The Wall Street Journal (Oct. 11, 2021), <https://www.wsj.com/articles/elon-musk-charlie-ergen-battle-of-billionaires-11633714306> (quoting from an interview with Jeffrey Blum, “Dish’s public-policy chief”); Todd Shields, *Billionaires Musk, Ergen and Dell Brawling Over Spectrum at FCC*, Bloomberg Wealth (Oct. 9, 2021) <https://www.bloomberg.com/news/articles/2021-10-09/billionaires-musk-ergen-and-dell-brawling-over-spectrum-at-fcc> (quoting from interviews with Jeffrey Blum and V. Noah Campbell, “chief executive officer of RS Access”).

spectrum between co-primary 5G and NGSO FSS operations is not viable in the 12 GHz Band.”² Yet the Commission saw through and rejected DISH’s schemes at every turn. So, DISH now resorts to its final predictable tactic—engaging in a media blitz to distract from the utter collapse of its arbitrage play.

As part of this campaign, DISH makes much of its so-called “coalition,” but it appears this group is nothing more than a small collection of organizations, most (or all) of which have direct financial ties to DISH or other MVDDS licensees. But for all of DISH’s bluster, its pay-for-play coalition cannot match the opposition from more than forty separate organizations from across the country with diverse interests that expressed genuine concern that DISH’s spectrum grab will harm real people (*see* Exhibit A). These supporters of true high-quality broadband include public interest groups, educational groups, agriculture organizations, and actual broadband providers that already use the band to connect otherwise unserved Americans.

These organizations consistently cite the real, verifiable difference next-generation satellite operators like SpaceX have made in communities. For instance, SpaceX has provided essential communications for first responders during natural disasters in places like California and Louisiana. SpaceX has also connected those living in remote tribal lands, such as the Hoh Tribe in Washington, who would have had no other way to connect or go to school. SpaceX’s next-generation services have provided high-speed broadband to communities that are not economic to serve by other technologies in locations like rural Virginia. This list goes on and continues to grow. Unlike DISH’s decades of empty promises, SpaceX has already provided real service across the country in just the few years since the Commission granted its license.

But DISH’s pressure campaign is not just wrong on substance, it is also wrong on process. Specifically, despite DISH’s implication that the Commission can just hand it new rights based on the existing record, any effort to move to an order at this stage in the proceeding would plainly be both arbitrary and capricious. Neither the Notice of Proposed Rulemaking (“NPRM”) itself nor the subsequent record provide sufficient notice and comment for the Commission to move directly to an order. The record contains no specific plans or proposed rules on which the public could provide input. Instead, the NPRM suggested several high-level courses the Commission could consider, but only if DISH were able to prove it had a plan that would not harm consumers of satellite services. In fact, the only action the Commission could take without a further notice is to conclude what has been clear for years—that the MVDDS licensees have failed to meet their commitments to provide substantial service to consumers and the MVDDS encumbrances should finally be removed from the 12 GHz Band.

DISH and its allies failed to meet the heavy burden the Commission put on them, having paid for only a single deeply flawed submission that is based on dubious assumptions and no actual expert knowledge of next-generation satellite systems. The record is replete with multiple parties citing a litany of shortcomings of this submission. Even the submission’s own author provides no defense against most of the critiques, including some of the most glaring shortfalls. For instance,

² Letter from Alison Minea to Marlene H. Dortch, IBFS File No. SAT-MOD-20180319-00022, Docket No. RM-11768, at 3 (Dec. 2, 2019).

as many have pointed out, the submission discusses the harm of notional terrestrial operations on only one satellite system operating in the 12 GHz Band without even acknowledging how DISH would disrupt the many ways the band is already shared with a plethora of other systems and technologies.

But even accepting the many flaws in the submission as true, it still fails to meet the precondition the Commission set that any action on DISH's behalf must be predicated on a demonstration that it does not harm users of the satellite services in the band. On its own terms, the submission still concludes that a government donation of new rights to DISH will in fact harm tens of thousands or more Americans that use next-generation satellite services. And that is a best case for DISH's position.

The overwhelming weight of the record in this proceeding demonstrates conclusively that the Commission should not succumb to DISH's latest media campaign to resurrect its failed arbitrage play. Given this record, the Commission should swiftly reject new rules that would compromise next-generation satellite systems, remove the MVDDS encumbrances from the 12 GHz Band, and close the proceeding. By simply following the evidence in the record, the Commission can accelerate the provision of high-quality next-generation satellite broadband to otherwise unserved Americans.

Sincerely,

/s/ David Goldman

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Director, Satellite Policy

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Attachment

EXHIBIT A

Organizations Filing in Opposition to MVDDS “Coalition” Effort to Change 12 GHz Spectrum Rules

Diverse Coalition of Public Interest Organizations, Industry, and Local Groups Support Current Satellite Operations in 12 GHz Band as Highest and Best Use of the Spectrum; Key to Bridging the Digital Divide

More than 40 separate organizations have filed comments opposed to expanding MVDDS use of 12 GHz for 5G mobile services, arguing that existing and innovative satellite use of the band is critical to reducing the digital divide. The below organizations filed formal comments to the Federal Communications Commission in response to the MVDDS 5G Coalition's petition for rulemaking and proposed rulemaking (NPRM) regarding the use of the 12.2-12.7 GHz band for speculative two-way mobile broadband service.

**Alaska Federation of Natives
Alaska Technologies
American Consumer Institute
Americans for Tax Reform
Appalachian Council for Innovation
Association for Competitive Technology (ACT)
AT&T
The Boeing Company
Center for Freedom and Prosperity
Center for Individual Freedom
Commercial Spaceflight Federation
The Committee for Justice
Connect Americans Now
Connected Nation
Consolidated Electric Cooperative
Consumer Action for a Strong Economy
Citizens Against Government Waste
Digital Liberty
DroneSense
FreedomWorks
Friday Institute for Educational Innovation, NC State University
Gigabit Libraries Network**

**Google
Hoh Indian Tribe
Intelsat
JobsOhio
Kepler
Maine State Senator Trey Stewart
Microsoft
Mississippi State Senator Scott Delano
National Grange on the Order of Patrons of Husbandry
National Rural Education Association
National Taxpayers Union
National Veteran Small Business Coalition
OneWeb
Santiam Canyon School District, Oregon
SES
Space Exploration Technologies (SpaceX)
Skyhook Solar
TechFreedom
USTelecom
U.S. Chamber of Commerce, Technology Engagement Center (TEC)
60 Plus Association**

Filing Links and Quotations

Alaska Federation of Natives, Julie Kitka

- "With increased connectivity in our rural villages, we would have a greater opportunity to build a better future for our children. We would be able to expand telemedicine and access to health care; expand educational opportunities; design new ways government services can be delivered and explore economic opportunities"

Alaska Technologies, John Wallace

- "The 12.2-12.7 band needs to be preserved in [its] present state. From what I understand, present fixed terrestrial licensees have had many years to provide service to our people, but have not done so. Present terrestrial licensees have been sitting on their licenses and not doing anything with them. Now that LEO providers are using the band as was designed, they are asking for changes that will do nothing but cause harm to LEO providers that are actually committed to service"

American Consumer Institute, Steve Pociask/Krisztina Pusok; Americans for Tax Reform, Katie McAuliffe; Center for Individual Freedom, Jeffery Mazzella; Center for Freedom and Prosperity, Andrew F. Quinlan; The Committee for Justice, Ashley Baker; Consumer Action for a Strong Economy, Matthew Kandrach; Digital Liberty, Katie McAuliffe; FreedomWorks, Jason Pye; National Taxpayers Union, Andrew Lautz/Brandon Arnold; 60 Plus Association, James L. Martin/Saul Anuzis

- "The Petitioners are requesting a rulemaking that not only would allow them to provide two-way mobile service, but it would also eliminate critical interference protections for NGSO systems using the band. In other words, if adopted, the proposed rule changes would adversely impact broadband access and limit competition"

Appalachian Council for Innovation, Donald Purdie

- "Next-generation satellite systems like Starlink are focused on communities like ours that have few options. Taking the spectrum away from satellite broadband to re-allocate to companies who have repeatedly failed to deploy would not serve our interests or help close the digital divide"

Association for Competitive Technology (ACT), Brian Scarpelli and Belen Crisp

- "New Non-Geostationary Satellite Orbit (NGSO) constellations are poised to connect unserved populations across America, particularly in rural, urban, and remote areas that are underserved. The Petitioners' proposed rule changes would adversely impact them and would represent a step backward in closing the digital divide"

AT&T, Michael P. Goggin

- "It is well-established that although the one-way services currently permitted under MVDDS licenses may coexist with DBS (subject to extensive pre-deployment coordination), two-way services would create an untenable interference environment. It is for this reason that the Commission restricted MVDDS to low-power, one-way, fixed use in the first place"

The Boeing Company, Bruce A. Olcott

- "MVDDS proponents alternatively claim that terrestrial mobile services can share the 12 GHz band with DBS and NGSO FSS systems, a position that lacks technical support and directly conflicts with their prior representations on this issue"

Commercial Spaceflight Federation, Karina Drees

- "Were the Commission to move forward with an NPRM, it would significantly undercut investment in next-generation satellite technology, inject enormous regulatory uncertainty as these systems are being deployed, and call into question the meaning of Commission authorizations"

Connect Americans Now, Richard T. Cullen

- "As we understand it, the proposed rulemaking in circulation would hinder the deployment of LEOs and undermine major investments that have already been made in this technology as a key tool to expand broadband service and competition"

Connected Nation, Brent Legg

- "Low Earth Orbit (LEO) satellite technology has the potential to finally deliver broadband speeds to some of our most remote rural homes and businesses. The 12 GHz band, as it currently stands, holds critical spectrum resources for LEO satellite broadband applications"

Consolidated Electric Cooperative, Lynn Thompson

- "Our service territory in central Missouri needs broadband options"

Citizens Against Government Waste, Thomas A. Schatz

- "Considering the technological advancements currently being developed and deployed, the FCC must maintain stringent oversight of the band and ensure that incumbent Non-Geostationary Satellite Orbit and Direct Broadcast Service satellite users of the band can continue to deploy satellites that increase communications capabilities that can also be leveraged for satellite-based broadband services to rural communities"

DroneSense, Chris Eyhorn

- "The Petitioners' proposed rule changes could adversely impact our shared goal of enabling first responder access to mobile broadband services as well as the Commission's progress on closing the digital divide, by reducing needed interference protections and limiting competitive broadband options"

Friday Institute for Educational Innovation, NC State, Ray Zeisz

- "it is imperative the Commission build and expand on positive momentum to maximize investments and innovations which will bring broadband coverage to all Americans, especially students in unserved rural areas hit hard by the shift to remote learning. That is why we write today; to encourage the [Commission] to oppose proposed changes regarding two-way mobile operations in the 12 GHz band which would undermine significant investments being made in Low Earth Orbit satellites as a broadband solution"

Gigabit Libraries Network, Don Means

- "GLN entered into an agreement with SpaceX (Starlink) to outfit several small rural public libraries as 'beta enterprise' users of its low earth orbit (LEO) satellite broadband system...Implementation of this LEO technology appears to be yielding faster connection speeds with lower latency than traditional geostationary satellite based services"

Google, Megan Anne Stull

- "the 12 GHz band appears to be a poor candidate for supporting terrestrial mobile broadband at this time, due to coexistence challenges between terrestrial 5G mobile systems and FSS terminals"

Hoh Indian Tribe, Dawn Gomez

- "because of Starlink, our community finally has broadband, distributed to our community in only a matter [of] weeks. This has enabled our children to participate in distance learning during the pandemic, obtain telehealth services, and connect our businesses to online services, among other things—for the first time"

Intelsat, Ray Rutngamlug and Cynthia J. Grady

- "adding terrestrial Mobile to the 12.2-12.7 GHz frequency band...would cause interference to incumbent operations, jeopardize Direct Broadcast Satellite...services to millions of end users, and devalue incumbents' investments"

JobsOhio, J.P. Nauseef

- "JobsOhio opposes the creation of a new terrestrial Mobile allocation in the 12 GHz band because current incumbents already make efficient use the spectrum, are making dramatic strides to bridge the digital broadband divide in the immediate future, and because new terrestrial operations pursuant to such an allocation will create harmful interference for incumbents"

Kepler Communications, Nickolas G. Spina

- "any modifications to the 12 GHz band would undermine active services of NGSO FSS operators in providing service to underserved and unserved areas. Meanwhile, despite having been granted ample amounts of spectrum, MVDDS licensees have failed to make use of their current allocations and demonstrate any substantial benefit provided to the public"

Maine State Senator Trey Stewart

- "Maine ranks among the 10 worst states in the country for internet coverage. Being a rural state with poor broadband access created a serious challenge for businesses, students, and people simply trying to do their job from home when the pandemic hit. Fortunately, some areas negatively impacted by the lack of accessible broadband have since been able to connect through next-generation satellite systems"

Microsoft Corporation, Paula Boyd

- "satellite-based broadband is an additional tool to provide broadband connectivity for Americans in unserved and underserved areas. Realizing greater 5G benefits can and should be accomplished in alternative ways without jeopardizing the benefits that derive from satellite space-to-earth operations in the 12 GHz band"

Mississippi State Senator Scott Delano

- "We encourage the Commission to reject the speculative attempts to upend the well-established and well-balanced spectrum sharing rules that are today the hallmark of the 12 GHz band"

National Grange on the Order of Patrons of Husbandry, Betsy Huber

- "We urge the Commission to consider the fact that changing the rules now would utterly disrupt U.S. NGSO systems and undermine significant investment and innovation directed at expanding broadband service. Remote and rural areas where 5G is out of reach are relying on these systems to move forward and expand access to broadband"

National Rural Education Association, Allen Pratt

- "we respectfully request that the FCC deny the Multichannel Video and Data Distribution Service (MVDDS) petition for a Notice of Proposed Rulemaking (NPRM) on two-way mobile use of the 12GHz band. This move would have a negative impact on the expansion of broadband service in rural areas and in rural school systems"

National Veteran Small Business Coalition, Scott S. Jensen

- "LEO satellite technology will help expand broadband connectivity for veterans and small business owners, especially in rural areas. It also holds great promise as a solution to increase competition and choice in other areas. We must continue to encourage investment in this innovative technology that is critical for bringing broadband connectivity and competition to unserved and underserved Americans"

OneWeb, Eric Graham

- "Arguments in support of introducing a terrestrial mobile allocation into a spectrum band with comparatively poor terrestrial propagation characteristics ignore the fact that such an allocation would only serve consumers who currently have many terrestrial mobile options in the areas where they live, work, and play"

Santiam Canyon School District, Oregon, Todd Miller

- "this service proved essential for us after Beachie Creek wildfires ripped through our canyon, devastating homes and infrastructure. For a while, [LEO satellite] technology was the only way our school district was able to communicate with staff, students and families"

SES, Petra A. Vorwig

- "Satellite operators have shown they can and will commit the necessary resources to build an infrastructure that supplies valuable services to urban and rural communities alike. Preserving the integrity of those services requires limiting interference from terrestrial sources, as the Commission did when it established the MVDDS operating framework"

Space Exploration Technologies (SpaceX), David Goldman

- "MVDDS licensees have claimed that they can be given new rights 'without harming other existing incumbent operations that have co-primary status in the band.' The Commission should dismiss the petition if the MVDDS licensees and those that they have funded or otherwise support are unable to produce indisputable technical evidence to back up that claim"

Skyhook Solar, Kendra Joseph

- "Many of our homes, businesses, and communities have traditionally had no access to reliable broadband, in Woody Creek, CO. There are no options for fiber or cable and the traditional satellite services offer intermittent service with such a high latency that working from home is impossible. Fortunately, next-generation satellites systems using the 12 GHz band are improving our access to broadband"

TechFreedom, Jim Dunston

- "the FCC would have to modify NGSO licenses to require them to suffer debilitating interference from mobile terrestrial users. The loss of the 12 GHz spectrum will no doubt limit overall data throughput on NGSO systems"

USTelecom, Patrick R. Halley

- "the record is clear that in fact two-way mobile broadband service in the 12 GHz band simply cannot coexist with NGSO or DBS service and proponents of allocating the band have not offered a proposal that proves otherwise"